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TO AMEMBASSY GUATEMALA PRIORITY

C O N F I D E N T I A L STATE 231599

E.O. 11652: N/A

TAGS: ETRN, GT, US

SUBJECT: A) GUATEMALA 5458; B) GUATEMALA 5349;

C) GUATEMALA 5313; D) STATE 84081

SUMMARY: CONTRARY TO THE IMPRESSION GIVEN BY MANAGING DIRECTOR, FLOMERCA, REFTEL A, DELTA HAS NOT BEEN CONTACTED BY GUATEMALAN-FLAG CARRIER'S US LEGAL COUNSEL ON POSSIBLE SHIPPING AGREEMENT AND, MOREOVER, US LINE QUESTIONS THE NEED OF LEGAL REPRESENTATIVE AS INTERMEDIARY. DELTA IS INTERESTED IN NEGOTIATING AN EQUAL ACCESS/POOLING AGREEMENT, INCLUDING POSSIBLY SOME FORM OF COOPERATIVE VENTURE, IF NECESSARY, TO REACH ACCORD WITH GUATEMALA LINE. WHETHER VENTURE WOULD BE SIMILAR TO "ASSOCIATION" ARRANGEMENT FLOMERCA HAS WITH OTHER LINES WOULD BE A COMMERCIAL MATTER TO BE DETERMINED BY THE TWO LINES. HOWEVER, IT IS UNLIKELY DELTA WOULD AGREE TO INEQUITABLE ARRANGEMENT WHERE BENEFITS WERE MORE FAVORABLE TO FLOMERCA. FACED WITH SUCH AN EVENTUALITY AND NO OTHER ALTERNATIVE, DELTA WOULD NO DOUBT REQUEST FMC INTERCESSION UNDER SECTION 19 OF THE MERCHANT

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MARINE ACT, 1920. IMMEDIATE PROBLEM FROM DELTA'S STAND-

POINT IS FLOMERCA'S UNWILLINGNESS TO NEGOTIATE WITH DELTA AND SET DATE TO COMMENCE DISCUSSIONS. EMBASSY IS REQUESTED TO EXPLORE MATTER WITH FLOMERCA OFFICIALS AND, IF NECESSARY, GOG AUTHORITIES AND REPORT RESULTS TO DEPARTMENT.

1. DEPARTMENT APPRECIATES THE PROMPT REPORT, REFTEL C, ON THE RECENT VISIT BY DELTA OFFICIALS AND FOLLOW-UP, REFTELS A & B. CLARK TELEPHONED THE DEPARTMENT NOVEMBER 12 AND RELATED EXPERIENCES IN GUATEMALA ALONG THE LINES REPORTED. HE INDICATED DELTA WANTS TO RESOLVE PROBLEM WITH FLOMERCA AS SOON AS POSSIBLE IN AN EQUITABLE MANNER. CLARK REQUESTED AN EVALUAION OF FLOMERCA POSITION AND RECOMMENDATIONS FROM USG AS TO MOST APPROPRIATE MEANS WHEREBY HIS COMPANY MIGHT ACHIEVE REASONABLE COMMERCIAL AGREEMENT INCORPORATING EQUAL ACCESS/POOLING ARRANGEMENTS AND POSSIBLY SOME FORM OF COOPERATIVE VENTURE WITH FLOMERCA. POSSIBLE COOPERATIVE VENTURE COULD INCLUDE ASSISTING THE GUATEMALAN CARRIER IN DEVELOPING A LASH CAPABILITY SINCE DELTA OFFICIALS AS A RESULT OF THEIR RECENT VISIT ARE SERIOUSLY CONSIDERING REGULAR LASH VESSEL CALLS AT SANTO TOMAS AND PUERTO BARRIOS. SUCH A VENTURE COULD TAKE THE FORM OF A SPACE CHARTER AGREEMENT WHEREBY FLOMERCA WOULD BE ALLOTTED SPACE ON A FULL BARGE OR LESS-THAN-BARGE-LOAD BASIS OR AN ACCORD WHERE FLOMERCA MIGHT PURCHASE ITS OWN BARGES (40,000 DOLLARS EACH) AND CONTRACT WITH DELTA FOR THEIR CARRIAGE TO AND FROM GULF PORTS AS WELL AS OTHER DESTINATIONS. ANOTHER POSSIBILITY WOULD BE FOR DELTA TO WORK WITH FLOMERCA IN THE DEVELOPMENT OF A MINI-LASH FEEDER SERVICE IN THE CARIBBEAN (SINGLY OR JOINTLY OPERATED) THAT MIGHT BE INTEGRATED WITH THE AMERICAN COMPANY'S OVER-ALL OPERATION. A MINI-LASH VESSEL CAPABLE OF CARRYING 24 BARGES COSTS APPROXIMATELY 10 MILLION DOLLARS. WE UNDERSTAND DELTA WOULD BE WILLING TO CONSIDER WORKING WITH FLOMERCA TO ARRANGE FINANCING TO DEVELOP ANY OF THESE CAPABILITIES.

2. BEGIN FYI: DEPARTMENT DOES NOT BELIEVE CONFIDENCE EXPRESSED BY FLOMERCA MANAGEMENT IN RESOLVING DIFFICULTY. CONFIDENTIAL

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TIES WITH DELTA WHOLLY WARRANTED AT THIS TIME BECAUSE OF THE FOLLOWING CONSIDERATIONS. FLOMERCA'S REPORTED PLANS TO PRESENT APPROVED "ASSOCIATION" FORMULA TO DELTA AS ESTABLISHED PROCEDURE (PARA 3 & 4, REFTEL B) FOR SERVING US-GUATEMALAN TRADE INDICATES POSSIBLE MISCONCEPTIONS REGARDING US SHIPPING LEGISLATION AND ROLE OF THE FMC. SECTION 15 OF SHIPPING ACT, 1916 REQUIRES EVERY SHIPPING AGREEMENT BETWEEN LINES OPERATING IN THE US

FOREIGN TRADE TO BE SUBMITTED TO THE FMC FOR APPROVAL PRIOR TO IMPLEMENTATION. HOWEVER, THERE IS NO STIPULATION REQUIRING AN AGREEMENT BETWEEN LINES IN ORDER TO SERVE OUR FOREIGN COMMERCE. WHETHER AN ACCORD IS ENTERED INTO IS A COMMERCIAL MATTER FOR THE LINES CONCERNED TO DETERMINE THEMSELVES. MOREOVER, APPROVAL OF ONE

"ASSOCIATION" AGREEMENT BY THE FMC DOES NOT SIGNIFY ACCEPTANCE OR APPROVAL OF GUATEMALAN POLICY OR THAT THIS TYPE OF AGREEMENT WILL BE APPROVED IN EVERY INSTANCE AS EACH ACCORD IS JUDGED ON ITS OWN MERITS, ITS EFFECT ON THE TRADE INVOLVED AND ONLY AFTER FULL CONSIDERATION IS GIVEN TO ANY PROTESTS THERETO THAT MAY BE FILED BY OTHER INTERESTED PARTIES (E.G. OTHER LINES). THE LATTER POINT IS SIGNIFICANT AND ONE WHICH MUST BE GIVEN CAREFUL ATTENTION WHEN FORMULATING ANY AGREEMENT, PARTICULARLY ONE BY WHICH DELTA HOPES TO RESOLVE THE QUESTION OF ACCESS TO GOG-CONTROLLED CARGOES. ONCE SUCH AN ACCORD IS FILED WITH THE FMC AND SUBSEQUENTLY PUBLISHED IN THE FEDERAL REGISTER FOR COMMENT, IT CAN BE EXPECTED THAT OTHER US LINES, PARTICULARLY SEA-LAND, MAY FILE PROTESTS HOLDING ANY SUCH AGREEMENT TO BE DISCRIMINATORY. THAT NO PROTESTS WERE FILED IN THE FLOMERCA-PAN AMERICAN MAIL LINE AGREEMENT PROCEEDINGS BEFORE THE FMC NO DOUBT CAN BE ATTRIBUTED TO THE FACT THAT US FLAG LINES DID NOT CONSIDER THE SOUTH FLORIDA TRADE ALL THAT IMPORTANT. THE LATTER AGREEMENT WAS SUBSEQUENTLY APPROVED BY THE FMC FOR A PERIOD OF TWO YEARS AFTER A FINDING WAS MADE THAT IT WAS NOT UNJUSTLY DISCRIMINATORY OR UNFAIR FROM THE STANDPOINT OF US FOREIGN COMMERCE.

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3. FLOMERCA, MOREOVER, MAY ALSO BE DECEIVING ITSELF BY BELIEVING DELTA WILL EITHER ACCEPT AN "ASSOCIATION" ARRANGEMENT OR STAY OUT OF THE TRADE. SMALL AMERICAN-OWNED, THIRD-FLAG CARRIERS IN OUR TRADE MAY EAGERLY AGREE TO THIS TYPE OF AGREEMENT BECAUSE IT REPRESENTS AN ACCEPTABLE PRICE IN ORDER TO GAIN ACCESS TO GOG-CONTROLLED CARGOES. DELTA, HOWEVER, IS A MAJOR US STEAMSHIP LINE, AND WOULD READILY CALL ON THE FMC UNDER SECTION 19 OF THE MERCHANT MARINE ACT, 1920 FOR REDRESS OF WHAT IT CONSIDERED A DISCRIMINATORY SITUATION IF IT WERE UNABLE TO REACH AN EQUITABLE SETTLEMENT WITH FLOMERCA. SECTION 19 REQUIRES THAT THE FMC "MAKE RULES AND REGULATIONS . . . TO ADJUST OR MEET GENERAL OR SPECIAL CONDITIONS UNFAVORABLE TO SHIPPING IN THE FOREIGN TRADE. . . WHICH ARISE OUT OF OR RESULT FROM FOREIGN

LAWS, RULES OR REGULATIONS OR FROM COMPETITIVE METHODS

OR

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